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COMMITTEE ON THE RIGHTS OF THE CHILD

Twelfth session

SUMMARY RECORD OF THE 302nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 30 May 1996, at 10 a.m.

Chairperson: Mrs. BELEMBAOGO

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial Report of Nepal (continued) (CRC/C/3/Add.34; HRI/CORE/1/Add.42; CRC/C.12/WP.3)

1. At the invitation of the Chairperson, the Nepalese delegation took places at the Committee table.

2. The CHAIRPERSON invited members' comments on questions 10 to 12 and 13 to 18 of the list of issues to be taken up (CRC/C.12/WP.3) concerning the definition of the child and general principles.

3. Mrs. KARP said that she would like to have some detailed information about the actual application of legislative provisions to combat discrimination between boys and girls in Nepal. Were there any plans to overcome the differences between rural and urban areas and what were the priorities in that connection? It would also be useful if the Nepalese delegation could provide some examples of the way in which the courts had interpreted the concept of the best interests of the child.

4. Mrs. SANTOS PAIS asked whether there was any plan to abolish the difference between the legal age for marriage for girls and for boys. Any such differentiation could only strengthen the existing discrimination against girls. As to the minimum age of criminal responsibility, she was extremely concerned by the fact that a child who had committed an offence could, from the age of 10, be deprived of his liberty. Also, under Nepalese law sentences for minors were generally reduced to half of the sentences imposed on adults for comparable acts, which was not the best solution, and persons who inflicted ill-treatment on children were liable to one year's imprisonment only. Were the authorities planning to take any measures to remedy those disparities?

5. With regard to general principles (questions 13 to 18 of the list of issues), some of the Nepalese delegation's replies could have been amplified. In the case of question No. 14, for instance it would be interesting to know more about the measures taken at the local level to reduce the disparities between the urban and rural areas so far as access by children to health, education and even culture was concerned.

6. With regard to question No. 16, she noted that discrimination based on caste still existed in Nepal though it was against the law. She wondered whether measures were being taken to bring about a change of outlook. For example, did school curricula include lessons designed to promote tolerance and mutual understanding?

7. With regard to question No. 17, she noted that under the Children's Act corporal punishment was allowed when inflicted in the best interests of the child. Since that Act could itself pose a problem, she would like to know how the courts had interpreted it.

8. With regard to question No. 18, paragraph 120 of the report stated that there was no provision in the existing laws concerning the promotion of the free expression of the child. What was the actual position bearing in mind in particular the importance of taking the child's views into consideration?

9. Miss MASON, noting that the legal age of employment was not the same in the public and private sectors, asked what the legal consequences of that difference were. She also wondered why the right to vote was granted only on reaching the age of 18 when one came of age at 16 in Nepal. Further, she would like clarification about the minimum age for enlisting in the armed forces. Was it 18, as stated in paragraph 58 of the report, or between 15 and 18 years, as stated in paragraph 329?

10. It was clear that the Nepalese Government was determined to fight discrimination which affected mainly the lower castes and girls. Yet, the Government seemed to be hesitating in its struggle against the caste system. If individuals were really to be persuaded that their place in society was not dictated by birth, however, very firm measures must be taken. None the less, it was not necessarily a good idea to strengthen the sanctions against the parents and guardians who perpetuated such discrimination, for experience had shown that, with education, it was sometimes possible to avoid punishment or monitoring. As for the protection of girls, paradoxically, plans to strengthen their autonomy seemed to perpetuate their traditional roles. In that connection, it was difficult to see how, from the list of responsibilities the Government would like to be shared, boys had kept themselves busy until now. Furthermore, although the Children's Act stipulated that there must be no discrimination between sons and daughters when it came to sharing inherited property, paragraph 185 of the report stated that the father was responsible in law for the maintenance of his son. What was the position with regard to daughters?

11. With regard to paragraph 104 of the report, she would like to have further information as to how the views of children had been taken into consideration in preparing the report.

12. Mrs. EUFEMIO, referring to the law under which a child could seek compensation before a court from the age of 16 if he was accompanied by a representative, asked for what reasons the presence of a representative would be required. To what extent could the child communicate directly with the court and how was he prepared for the hearing? Moreover, the definition of the child should not be based solely on age but also on knowledge and on the extent of his or her capabilities.

13. Turning to general principles, she noted that the Children's Act provided for equal payment for all and asked whether membership of a political party played a part in that respect. So far as discrimination against girls within the family was concerned, she would like to know what steps the Government was planning to take to bring about a change in attitudes. In her view, imposing sanctions on parents who treated some of their children unfairly might needlessly undermine parental authority. She would prefer an approach that was geared to combating poverty in particular. Paragraph 71 of the report dealt with the measures taken to reduce the work burden on girls but it was important not to forget their mothers who also needed protection. Were there

any day-care centres for children of preschool age that would promote their socialization? Paragraph 91 of the report stated that there was no legal provision to punish guardians who did not protect the interests of the child. Did self-help groups play any role in that regard?

14. Mrs. BADRAN said that discrimination against women was particularly fraught with consequences since Nepal was one of only three countries where the life expectancy of women was lower than that of men. The ratification in 1991 of the Convention on the Elimination of All Forms of Discrimination against Women and the creation of a Ministry for the Status of Women were encouraging, albeit belated, measures. The time had come to evaluate the actual situation of women and girls. It was sometimes necessary to introduce compensatory procedures, which were not necessarily to be regarded as discriminating against men. Preschool education, for instance, should encourage girls to make up for the very high school drop-out rate in that population group. The problem called for a global approach and Nepal should take advantage of the assistance with which various organizations, such as UNICEF, were prepared to provide it in that connection.

15. In the case of discrimination based on caste, the approach must be identical. Minds should of course be educated, particularly within the family, but the political and legislative steps necessary to bring about the desired change in behaviour should also be taken. For example, if certain castes were denied access to certain posts, an effort must be made to exercise positive discrimination in favour of those concerned so that everyone knew that it was possible, through education, to improve oneself socially.

16. Paragraph 106 of the report stated that in the family the views of children were rarely taken into account. True, children did participate in certain ceremonies, and did go to lectures and shows, but that was not really participation. In any event, even though it played an important role, the family was not the only place to learn how to participate. Voluntary action was also required, stimulated by associations, groupings and genuine structures and directed mainly at the school, as the strategic point for acquiring such knowledge.

17. The gap between the letter of the law and its practical application was still too wide. To reduce that gap, one must again turn to the school and start by making education compulsory for all. That presupposed action against discrimination which could include "compensatory" measures in favour of girls.

18. The CHAIRPERSON said that, like Mrs. Badran, she would stress the need to strengthen in practice respect for the principle of non-discrimination against women. The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child were in fact complementary and Governments could, by such measures as "positive discrimination", create an environment conducive to a change in attitudes towards women and children.

19. Mr. SHAKYA (Nepal), replying to the question about the difference between the services provided for children in rural and in urban areas, said that the country was divided into 3,996 village development units which benefited under the terms of the five-year plan. The Government was also endeavouring to

establish banking facilities, one bank for every 30,000 inhabitants, and to increase the number of primary schools. Those services would have a definite role and would be in addition to the activities of the village development committees, each of whose nine members, except for the Chairman and Vice-Chairman, represented about 1,000 persons. The committees received a subsidy of 500,000 rupees a year for social development, a large part of which was used to provide primary schools with basic equipment. In addition to the subsidy, many individuals, clubs and private organizations made donations.

20. The difference between the ages for marriage of girls and boys would remain, but a bill to raise the age to 18 years for girls and 22 years for boys and then to abolish the obligation to obtain the parents' consent, was under consideration.

21. A question had been raised concerning the age at which legal proceedings could be brought. Any individual could do so from the age of 16. Before then, he or she had to be represented either by counsel or by any person who submitted a complaint on his or her behalf to the courts. A minor under 16 years of age could not give evidence in court.

22. There were still no juvenile courts but it was planned to establish them. In the meantime, any case involving a child was dealt with by a special team of three district court judges who could call upon the services of child psychologists and social workers. No such case had as yet been brought before a court, which explained the Government's delay in putting the plan into effect. For the same reason, it was difficult to answer the question concerning the interpretation of the Convention by the courts.

23. The age of criminal responsibility, another question raised, was 10 years. If a child between 10 and 14 years of age committed an offence entailing a fine, he was merely admonished. If the offence entailed a prison sentence, the child could not be sentenced to more than six months in detention. For an offender aged from 10 to 16 years, the prison sentence was half that of the sentence imposed on an adult. As matters stood, Nepal was not contemplating any change to those provisions.

24. With regard to sex discrimination, particularly in the matter of property and inheritance, if the father died before the property was distributed, his widow and children inherited; but the father was responsible only for the maintenance of his son, not for that of his daughter. Young lawyers and militant feminists however, considered that those provisions were discriminatory and contrary both to the Constitution and to the Convention on the Elimination of All Forms of Discrimination against Women, to which Nepal was party, and had therefore referred the matter to the Supreme Court which had decided that the Government, in consultation with the competent organizations and sectors of civil society, should submit a bill to put an end to such discrimination within a period of one year, namely, by January 1997. The bill was under consideration and was the subject of public discussion. Women were gradually becoming aware of their position and, even if the right to own property remained unchanged, it was planned at least to make the father responsible for the maintenance of his daughters as well as of his sons. The preparation of Nepal's report to the Committee on the Elimination

of Discrimination against Women would undoubtedly clarify the position and would pave the way for reducing the differences between the sexes.

25. The right of the child to participation was something quite new in Nepal. Having regard to the fact that at the present time it was the man who took the decisions, without even asking for his wife's opinion, it was easy to see that children would not have the right to a say in matters in the immediate future. Attitudes were of course changing little by little, particularly since, under the democratic system, candidates in the elections made promises which transmitted the message, as it were, and public opinion expected those promises to be followed by specific measures. There was still no question, however, of providing for sanctions against a man who took a decision without seeking the opinion of his wife and children.

26. In practice, discrimination, particularly on the ground of religion or caste, still existed in Nepal, but it was far less serious than in India even though Nepal was a Hindu kingdom. In that connection, the traditional ban on entry into certain places of worship should not be regarded as a discriminatory measure, strictly speaking. The Government's moves to combat discrimination in health, education and employment were communicated through films and advertisements. The attention of the King and of Parliament had been drawn to those problems.

27. In Nepal, all children were admitted to school, whatever their caste. There were however more boys than girls in school, which amounted to discrimination against the latter. The authorities were endeavouring to develop distance learning in order to remedy the situation. Also, although there was provision for primary schools to teach in the different Nepalese dialects, sometimes there were not enough teachers or textbooks.

28. It was true that in rural areas women had to perform most of the household tasks while the men often remained idle. That situation could be resolved not through legislation but rather by making the population aware that it was only right and proper to share the work fairly. Another solution would be to develop infrastructure services in the villages so that the women no longer had to lay in a supply of wood and water in order to prepare meals. Nepal had considerable hydroelectric potential which should be developed for the benefit of the inhabitants of rural areas.

29. The public authorities were endeavouring to build more schools, as they realized that education was a decisive factor in changing behaviour in society. In 1996, the funds allotted to education accounted for 14 per cent of the State budget.

30. The CHAIRPERSON asked what exactly was the age for military conscription.

31. Mr. SHAKYA (Nepal) said that it was 18 years. Young Nepalese men could enlist from the age of 15 years in order to follow military training but nobody under 18 years of age could be recruited into the army.

32. The CHAIRPERSON invited members to address their comments to, or seek clarification from, the delegation.

33. Mrs. KARP observed that there was a sizeable traffic with India in young Nepalese girls who were apparently discouraged from returning to Nepal for fear that they might help to spread the AIDS virus. She urged the Nepalese Government to monitor more closely the transit of children between Nepal and India.

34. With regard to the physical integrity of the child, she trusted that the Government would do everything possible to put an end to the traditional practices suffered by young Denki and Kumari girls. There again, it was not enough to ensure the law was applied: the attitude of the people must be changed. The law prohibiting sexual exploitation of children within the family also did not seem very clear and the sanctions for which it provided did not seem to be at all severe. Furthermore, was there any machinery whereby battered children could make a complaint, and could such children actually obtain compensation for the damage they had suffered? Lastly, to make it easier to register births, she recommended that the Nepalese Government should establish additional registries, in hospitals for example, to offset the shortcomings in that area.

35. Mrs. SANTOS PAIS said that there was a great disparity between law and practice so far as the rights of the child were concerned. Admittedly, the law was in conformity with the Convention but the Government should endeavour, by means of education and information campaigns, to influence attitudes.

36. The legal age for marriage should be the same for boys and girls, in keeping with the spirit of the Beijing Conference. Similarly, in the matter of succession, the heirs, both boys and girls, should be treated on an equal footing. The age of criminal responsibility, which was fixed at 10 years, was too low: it was inconceivable that a 10-year-old child could be deprived of his or her liberty. As to paragraph 151 of the report, imprisoning children with adults and treating them as harshly as the latter was contrary to article 40 of the Convention. With regard to the views of the child, it was implicit in the law which provided that any adult could represent before the courts a child whose rights had been violated that children were not regarded as fully-fledged persons. Moreover, if the child suffered ill-treatment at the hands of his parents, they could not be expected to bring a complaint against themselves. There was no law providing for the punishment of parents who inflicted ill-treatment on their children and it should therefore be clearly established in law that parents must carry out their responsibilities towards their children. Paragraph 210 of the report stated that, under the Children's Act, parents, teachers, guardians and child welfare officers could penalize a child for indiscipline but could not deny children food. That provision allowed considerable scope for inflicting on children punishment which, though admittedly less severe than the denial of food, was too severe. The Act should therefore be reviewed.

37. The fact that the sentences laid down for the punishment of acts of torture were lacking in severity gave cause for concern, and the authorities should be encouraged to make such sentences harsher while bearing in mind article 37 (a) of the Convention. She would like to have information about

the procedure for filing a complaint in cases of torture. Was there an independent institution to which children who were the victims of torture could turn and was there an organization to ensure that acts of torture did not occur in prisons or social institutions?

38. Miss MASON, referring to paragraphs 107 and 117 of the report, said that she would like to have further information about the people living in the Terai and in the hills, who had difficulty in obtaining citizenship certificates as they did not have the necessary documents. What was the position of children who had not been declared? If they could not prove that they existed in law, how could they have access to the relevant services? Were the authorities planning to facilitate the registration procedures, for instance, by using mobile units? Paragraph 127 of the report stated that, in rural areas, children did not have access to the relevant information because of transportation and communications problems. In that connection, it should be remembered that States parties were under an obligation to promote the dissemination of information and material of social and cultural value for the child.

39. With reference to paragraph 151 of the report, she said those responsible in general for applying the law and prison staff in particular should receive training in human rights issues. Lastly, the Nepalese Government's objective should be not so much to reduce the number of discriminatory practices based on sex and caste, but rather to abolish them.

40. Mrs. KARP said it was surprising that the Nepalese Government stated, in its written reply to question No. 27, that no case of violence within the family had been reported. Yet it was common knowledge that invariably, there were such practices in all countries. Moreover, as a child could be heard as a witness only from a fairly advanced age, it would be useful to have information concerning the measures taken, in accordance with article 12 of the Convention, to allow the child to be heard in any judicial or administrative proceedings concerning him.

41. Mrs. SARDENBERG said she wondered why the Nepalese delegation had often used the word "later" concerning the application of a number of provisions in the Convention. She would also like to have information on the discrimination suffered by members of the lower castes, and in particular children, and also on the age at which a child could be enlisted in the armed forces. Lastly, she would like to know whether, in accordance with article 12 of the Convention, the child was entitled, within the family to express his opinion freely on any question of concern to him.

42. Mrs. BADRAN said she would like to know what role the NGOs played in combating the various forms of violence suffered by children and what measures were taken to protect abandoned children and in particular to ensure that they did not fall into prostitution and that their organs were not removed as, according to certain information, had occurred.

43. Mrs. EUFEMIO said that she would like to have information about the registration of births of abandoned children and the way in which the best

interests of those children were taken into account when they were adopted or placed in foster homes. She would also like to know what measures were taken to prevent children from being exploited in their adoptive family and, in particular, whether Nepal had ratified The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

44. Mr. SHAKYA (Nepal) said that trafficking in young girls between Nepal and India was indeed on the increase despite the prison sentences of up to 20 years, to which those who engaged in it were liable. According to various estimates, between 100,000 and 150,000 girls were the victims of such trafficking, which it was difficult to stop because of the difficulties in monitoring the Indo-Nepalese border. Nepal and India were therefore planning to sign an agreement with a view to overcoming the problem.

45. As to the difficulties the Kumari ("living goddesses") had in marrying, which stemmed from the belief that a man who married one of them was doomed to die within six months of his marriage, attitudes had changed considerably and the Government was endeavouring, with the help of the NGOs, to put an end to such beliefs which infringed the rights of certain categories of girls and in particular the Denki and the Badi.

46. In general, the NGOs made a major contribution to the application of the law on the protection of children by reporting the abuses they suffered. The Nepalese Government did not deny that violence, and in particular sexual violence, existed within the family but would simply point out that there had been no recorded case of violence thus far. The Government could therefore investigate the matter in collaboration with the NGOs.

47. With regard to article 12 of the Convention, it should be noted that the child could be heard in any judicial or administrative proceedings concerning him or her, through the person representing him or her. In that way, the courts ensured that the opinions of the child were duly reflected.

48. It was true, that the bill to compensate persons who suffered torture did not refer expressly to cruel, inhuman or degrading treatment and so did not fully comply with the Convention. But the Nepalese Government would take due account of the Committee's view that a one-year term of imprisonment for persons who had tortured a child or an adult was inadequate.

49. A bill providing for the establishment of a national commission of human rights had been drafted with the assistance of the Centre for Human Rights and would be tabled before Parliament at its next session.

50. With regard to civil status, the Government had launched a broad campaign to alert citizens to the need to declare marriages and births in particular. Although in principle a birth certificate had to be presented when a child was enrolled, schools had never refused to enrol a child who did not have such a certificate. It was merely a question of encouraging parents to have certificates issued. Children born in maternity hospitals were registered automatically but there were still not a lot of those hospitals. The Government had therefore initiated a project, in collaboration with NGOs, WHO and UNICEF, to establish more maternity hospitals.

51. As to the "light punishment" parents were entitled to inflict on their children, his delegation recognized that it was necessary to make sure that such practices were not used to the detriment of the best interests of the child. Lastly, at the legislative level, Nepal would endeavour to bring its law more into line with the provisions of the Convention and to apply existing laws fully in practice. In particular, it would take steps to ensure that the age for marriage was the same for boys and for girls even though, according to some doctors, the existing difference was justified on biological grounds.

The meeting rose at 1.05 p.m.